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## INJUSTICE OF THE PRESENT SYSTEM

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The Workmen's Compensation Act of New York provides that employers in certain extra hazardous occupations shall be required to provide compensation to workmen in case of all accidents, unless the responsibility of the workmen for serious negligence is apparent. This bill, before it was passed by the legislature, was most carefully considered. It received the endorsement not only of labor organizations, but also of leading employers, some of whom were affected by the terms of the bill. All the provisions of the bill were carefully considered, with an earnest desire to see that it imposed no unjust obligation upon any one. In spite of such careful and detailed consideration of the principles underlying the bill and of their application, by the Commission, by the Legislature, and by citizens whose comment was invited, our Court of Appeals decided by an unanimous vote that it was unconstitutional.

I recall a remark of Thomas Carlyle, to the effect that if you are going anywhere you must start from where you are. In a Hibernian sense the Court of Appeals must have had this in mind. Since it was not going anywhere, it did not start from where we are. It started from the old common law of three or four centuries ago, and coming down to this legislation pronounced it highly revolutionary. From the old common law point of view I have no doubt they were right. Since the day when the common law was the law of the land of Great Britain, conditions have revolutionized life and conduct, and if our courts are to enter the field of economics and determine the propriety or impropriety of laws in relation to social conditions and social well-being, they ought to consider the social conditions of to-day, the social legislation which has recently been passed, and the spirit as well as the letter of our national and state constitutions. And I believe that if our Court of Appeals of the State of New York had been as well informed regarding the social conditions of our time and the social thought of our time, as it is regarding legislation in the past and in the present,

it would have rendered an entirely different decision. Without attempting to pass judgment on the wisdom or unwisdom of the particular law in question, I do believe that the time has come when we must insist that we shall be free, within certain reasonable limits, to pass whatever laws seem to us to be right and just, that are manifestly for the welfare of the people of our time. If our courts refuse to recognize the justice of this determination, and declare that the constitutions of our states, drafted to secure and maintain the liberty of our citizens, make impossible such social legislation for the promotion of well-being and social progress, then the sooner our constitutions are amended the better.

Now, I wish to make just two points in relation to the prevention of accidents. I believe a compulsory workmen's compensation law to be a most valuable agency for the prevention of accidents. Such a law would make apparent the enormous size of the bill now being paid to settle the losses arising from accidents to industrial laborers. Of course, the community already pays the bill, but it pays it blindly, only slightly appreciating its size, and the bill paid by the community is much larger than would be paid under a workmen's compensation law. The full amount of the present bill no one can calculate.

Some of us, who have to do with the machinery of justice, once in a while come across a case of a boy or girl with life ruined which we can trace back to the time when the wage-worker of the family was thrown out of employment. The son or daughter who had been getting an education to enable him or her to make an independent, honest livelihood was compelled to go to work without proper education, and because of inadequate preparation for life, became one of the unskilled and frequently unemployed, unfortunate and dependent, or fell into the delinquent class, and turned up a common criminal. We pay these remote items of the bill, as well as the direct medical and hospital charges and charity relief. But if only the direct charges were placed on the trade under a workmen's compensation law, the amount would be so great and the burden so considerable that employers and employees would make a more united effort to prevent the occurrence of accidents.

But more preventive still in my judgment would be the effect of a workmen's compensation law, if the burden were distributed equitably on the three parties in interest, viz.: the public, the em-

ployer and the employee. Under any compensation law all these will bear their burden, but the distribution of the burdens which are unassigned will not be equitable and the beneficial effects will not so surely follow. But, if the respective amounts are determined fairly and are imposed directly, the stimulus to diminish accidents will surely become greater. The public, to reduce its share of the burden, will pass stricter laws to prevent accidents, and be more interested in their proper enforcement. Employers will be more liberal in installing, on their own initiative, accident-preventing machinery, and will be more careful to enforce their own regulations. Finally, workmen will be careful themselves, and more insistent on the carefulness of their fellow-workmen to avoid accidents. The burden directly and constantly visible will produce the results which regularly have followed from direct taxation. Thus the increased vigilance of employers and employees, and the greater zeal of legislators and executives would work together for the common good, and this good would follow from the imposition of a workmen's compensation law whose burdens should be equitably distributed and directly imposed.